IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10354 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOREBHAI BECHARBHAI PATEL & 1 - Petitioners
Versus
SPECIAL LAND ACQUISITION OFFICER & 1 - Respondents

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Appearance :
MR AJ PATEL for Petitioners
MR LR PUJARI, A.G.P. for respondent No.1,
MR AJAY R MEHTA for Respondent : 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 06/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.L.R.Pujari, learned Assistant Government Pleader, waives service of notice on behalf of respondent No.1. Mr.Ajay R.Mehta, learned counsel, waives service of notice on behalf of respondent No.2. Having regard to the facts of the case, the instant petition is taken up for final disposal today.

2. By filing the instant petition under Articles 226 & 227 of the Constitution, the petitioners have prayed to issue a writ of certiorari, or any other appropriate writ or order to quash decision dated August 31, 2005 of the Special Land Acquisition Officer, Branch-4, Surat, by which the application submitted by the petitioners under Section 28A of the Land Acquisition Act, 1894 [“the Act” for short] is ordered to be filed, as well as order dated September 30, 2005 passed by the Special Land Acquisition Officer, Branch-4, Surat, by which application dated September 12, 2005 made by the petitioners is also ordered to be filed on the ground that the said application was filed after order dated August 31, 2005 on the application filed under Section 28A of the Act was passed.

3. A proposal was received by the Sate Government to acquire lands of village Kawas, Taluka : Choryasi,

District : Surat, including Survey No.181/1 of the petitioners, for the purpose of providing the Gas Terminal and L.P.G.Plant by O.N.G.C. Therefore, notification under Section 4 of the Act was issued, which was published in the Official Gazette on November 2, 1992. Declaration made under Section 6 of the Act was published on April 1, 1983. The Special Land Acquisition Officer made his award under Section 11 of the Act on May 20, 1985. Some of the claimants, who were dissatisfied with the offer made by the Special Land Acquisition Officer, had sought references. The Reference Court by judgment dated January 27, 2000 awarded additional compensation. On learning this, the petitioners instructed their lawyer to apply for certified copy of the judgment rendered by the Reference Court in the name of the petitioner No.2 i.e. Dalpatbhai. Receipt for having applied for certified copy was also issued in the name of petitioner No.2, which is produced by the petitioners at page 49 of the compilation. The petitioners thereafter filed application under Section 28A of the Act on March 27, 2000 requiring the Special Land Acquisition Officer to redetermine the amount of compensation payable to them on the basis of judgment and award of the Reference Court. In the application it was mentioned that certified copy of the judgment of the

Reference Court was applied for and would be produced when it was made available. On obtaining certified copy, it was produced before the Special Land Acquisition Officer along with forwarding letter dated September 28, 2000, which is at page 53 of the compilation. The record shows that against the award of the Reference Court, O.N.G.C.had filed appeals, which were partly allowed by the High Court on February 26, 2001. Therefore, after obtaining certified copy of the judgment of the High Court, it was produced by the petitioners before the Special Land Acquisition Officer on November 19, 2001. The learned advocate for the petitioners was informed by letter dated August 31, 2005 by the Special Land Acquisition Officer that as the petitioners had failed to clarify as to why certified copy of the Award of the Reference Court was applied for in the name of Dayalbhai and not in the name of petitioner No.2 i.e.Dalpatbhai, in spite of letters dated September 13, 2003, June 28, 2004, August 7, 2004 and August 31, 2004, it was decided to file the application submitted under Section 28A of the Act. Thereupon, the learned counsel for the petitioners addressed another application dated September 12, 2005, but, the said application was also ordered to be filed on September 30, 2005 on the ground that it was submitted after decision on the application under Section 28A was

taken.

4. The case of the petitioners is that the application under Section 28A of the Act was filed on March 27, 2000 i.e.within the time prescribed by the statute and, therefore, amount of compensation payable to them should have been redetermined by the Special Land Acquisition Officer on the basis of judgment and award of the Reference Court as modified by the High Court. According to the petitioners, law does not require that application for redetermination of compensation must be accompanied with a certified copy of the award of the Court and, therefore, respondent No.1 was not justified in filing the application submitted by the petitioners under Section 28A of the Act. What is claimed by the petitioners is that whether certified copy applied for in the name of petitioner No.2 was produced, or whether certified copy obtained in the name of Dayalbhai was produced, is hardly relevant, inasmuch as the fact that the amount of compensation was enhanced at the instance other claimants is not in dispute and, therefore, the orders impugned should be set aside. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

5. This Court has heard Mr.A.J.Patel, learned counsel for the petitioners as well as Mr.L.R.Pujari, learned counsel for respondent No.1, and Mr.Ajay R.Mehta, learned counsel for respondent No.2.

6. From the facts of the case, it is evident that after acquiring lands of Village Kawas for public purpose of providing Gas Terminal and L.P.G.Plant at the instance of O.N.G.C., the Special Land Acquisition Officer had made his award on May 20, 1985. It is not in dispute that some of the claimants, who were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer, had sought references and the Reference Court had awarded additional compensation to those claimants by judgment and award dated January 27, 2000. Section 28A of the Act enables one, who is aggrieved by the award of the Collector, to claim redetermination of compensation payable to him on the basis of the award of the Court notwithstanding the fact that he had not made application to the Collector under Section 18 of the Act. The only requirement of the law is that the application under Section 28A must be submitted within three months from the date of award of the Court. Here, in this case, application under Section 28A of the Act was filed by the

petitioners on March 27, 2000 i.e. within three months from the date of award of the Reference Court. Under the circumstances, it was the duty of the respondent No.1 to redetermine the amount of compensation payable to the petitioners on the basis of award of the Reference Court. The Special Land Acquisition Officer could not have declined to exercise jurisdiction under Section 28A of the Act on the ground that certified copy was applied for in the name of Dayalbhai and not in the name of petitioner No.2, though the record indicates that certified copy was applied for in the name of petitioner No.2 himself. In Chhitubhai Naranbhai Patel vs. Special Land Acquisition Officer, 2005(1) GLH 88, the Division Bench of this Court has taken the view that production of certified copy of the award along with application under Section 28A of the Act is not *sine qua non* for exercise of powers by Special Land Acquisition Officer under Section 28A of the Act. Therefore, this Court is of the opinion that application submitted by the petitioners under Section 28A of the Act on March 27, 2000 could not have been ordered to be filed. As the respondent No.1 has failed to exercise jurisdiction vested in him under Section 28A of the Act, the instant petition will have to be accepted.

For the foregoing reasons, the petition succeeds. The order dated August 31, 2005 passed by the respondent no.1, by which application submitted by the petitioners under Section 28A of the Act was ordered to be filed, is hereby set aside. So also, the order dated September 30, 2005 rejecting the application dated September 12, 2005 made by the learned counsel for the petitioners on the ground that before receipt of the said application, the application submitted under Section 28A of the Act was ordered to be filed, is also hereby set aside. The respondent No.1 is hereby directed to decide the application submitted by the petitioners under Section 28A of the Act on March 27, 2000 in terms of judgment of the Reference Court as modified by the High Court. The respondent No.1 shall decide the application submitted by the petitioners under Section 28A of the Act as early as possible and latest before October 31, 2006. Rule is made absolute. There shall be no order as to costs. Direct Service is permitted.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J]

(patel)